

## REMARKS

Applicant respectfully thanks the Examiner for acknowledging receipt of the priority papers submitted under 35 U.S.C. §119(a-d).

Claims 1-28 are pending in the present Application, with claims 1-15 having been withdrawn from consideration. The Examiner's rejections will now be respectfully addressed in turn.

### Claim Rejections Under 35 U.S.C. §102(e)

Claims 16-18, 20-22, and 24-28 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Publication No. 2003/0160059 to Credle (hereinafter "Credle").

Applicant respectfully traverses this rejection.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Applicant's claim 16 recites *inter alia*,

"said magazine discharge arrangement comprising at least one confectionery article fitting compartment adapted for performing a movement relative to said magazine outlets upon activation of an activation arrangement and *thereby transferring at least one confectionery article comprised in at least one confectionery article magazine to at least one output compartment*,"

Credle does not teach a transferring of at least one confectionery article comprised in at least one confectionery article magazine to at least one output compartment. There is no teaching of this transfer because Credle does not teach an article *magazine that is separate from* an output compartment. In fact, Credle does not teach an output

compartment at all. Instead, the compartment 1480 that the Examiner refers to by as the output compartment is more closely equatable to the “article fitting compartment.” The element 1420 of Credle, which is referred to as the “article fitting compartment” in the Office Action is actually an overall elevation system 1420, and thus, should not be equated with the “article fitting compartment” of Applicant’s claims.

Applicant notes that the claimed “rotating movement” of the Applicant’s claimed output compartment offers improvement over the elevating system of Credle. Moreover, this rotating output compartment offers a cost efficient intermediate chamber that aids in tamper prevention.

For at least the above reasons, Credle fails to disclose all of the limitations of claim 16. Accordingly, Credle does not anticipate claim 16. Applicant respectfully submits that claims 16 is not further rejected or objected and is therefore allowable. As claims 17-18, 20-22, and 24-28 depend from claim 16 and are not further rejected or objected to, these claims are correspondingly allowable. Reconsideration and allowance of claims 16-18, 20-22, and 24-28 is respectfully requested.

#### Claim Rejections Under 35 U.S.C. §103

Claims 19 and 23 are rejected under 35 U.S.C. 103(a) over Credle. Applicant respectfully traverses this rejection.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art and that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen*

v. *Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

As claims 19 and 23 depend from claim 16, for at least the reasons discussed with regards to claim 16 above, Applicant respectfully asserts that Credle does not teach every element of claims 19 and 23. Accordingly, Applicant respectfully submits that *prima facie* obviousness does not exist regarding amended claims 19 and 23 with respect to Credle.

Since Credle fails to teach or suggest all of the limitations of claims 19 and 23, clearly, one of ordinary skill at the time of Applicant's invention would not have a motivation to modify the reference, or a reasonable likelihood of success in forming the claimed invention by modifying the reference. Thus, here again, *prima facie* obviousness does not exist. *Id.*

As such, the requirements of *prime facie* obviousness does not exist regarding claims 19 and 23 with respect Credle. Applicant respectfully submits that claims 19 and 23 are not further rejected or objected and are therefore allowable.

#### Conclusion

All of the objections and rejections are herein overcome. In view of the foregoing, it is respectfully submitted that the instant application is in condition for allowance. No new matter is added by way of the present Amendments and Remarks, as support is found throughout the original filed specification, claims and drawings. Prompt issuance of Notice of Allowance is respectfully requested.

The Examiner is invited to contact Applicant's attorney at the below listed phone number regarding this response or otherwise concerning the present application.

Applicant hereby petitions for a three month extension of time under 37 C.F.R. 1.136(a) or 1.136(b) for entry and consideration of the present Reply.

If there are any charges due with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130 maintained by Applicant's attorneys.

Respectfully submitted,

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By: 

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